

which permits supplemental audits or examinations of tax returns by State audit personnel shall provide that the audits and examinations shall be conducted under the supervision and control of the Commissioner or his delegate, who shall have the authority to determine which returns shall be audited and when the audits shall occur. Also, such agreements shall provide that the results of any such supplemental audit shall be referred to the Commissioner or his delegate for final administrative determination. The Commissioner or his delegate shall, to the extent permitted by law, allow an electing State reasonable access to tax returns and other appropriate records and information relating to its qualified tax for the purpose of conducting any such supplemental operations. In addition, the Secretary or his delegate shall permit an electing State to inspect the workpapers which are compiled in the course of verification by the Treasury Department of the correctness of the accounting by which the amounts of the actual net collections attributable to the electing State's qualified taxes are determined.

[T.D. 7577, 43 FR 59364, Dec. 20, 1978]

**§ 301.6361-3 Transfers to States.**

(a) *Periodic transfers.* In general, amounts collected by the Federal Government which are allocable to qualified taxes (including criminal fines which are required to be paid to a State, as determined under paragraph (f)(3) of § 301.6361-1) shall be promptly transferred to each State imposing such a tax. Transfers of such amounts, based on percentages of estimated Federal collections, shall be made not less frequently than every third business day unless the State agrees to accept transfers at less frequent intervals.

(b) *Determination of amounts of transfers.* The amounts allocable to the qualified taxes of each State for purposes of periodic transfer shall be determined as a percentage of the estimated aggregate net individual income tax collections made by the Federal Government. For purposes of this paragraph, the "aggregate net individual income tax collections" shall include amounts collected on account of the Federal individual income tax and all

qualified taxes by all means (including withholding, tax returns, and declarations of estimated tax), and shall be reduced to the extent of any liability to taxpayers for credits or refunds by reason of overpayments of such taxes. The percentage of the estimated amount of such collections which is allocated to each State shall be based on an estimate which is to be made by the Office of Tax Analysis prior to the beginning of each calendar year as to what portion of the estimated aggregate net individual income tax collections for the forthcoming year will be attributable to the qualified taxes of that State. Each State will be notified prior to the beginning of each calendar year of the amount which it is estimated that the State will receive by application of that percentage for the year. However, the Office of Tax Analysis shall, from time to time throughout the calendar year, revise the percentage estimates when such a revision is, in the opinion of that office necessary to conform such estimates to the actual receipts. When such a revision is made, the payments to the State will be adjusted accordingly.

(c) *Adjustment of difference between actual collections and periodic transfers.* At least once annually the Secretary or his delegate shall determine the difference between the aggregate amount of the actual net collections made (taking into account credits, refunds, and amounts received by withholding with respect to which a tax return is not filed) which is attributable to each State's qualified taxes during the preceding year and the aggregate amount actually transferred to such State based on estimates during such year. The amount of such difference, as so determined, shall be a charge against, or an addition to, the amounts otherwise determined to be payable to the State.

(d) *Recipient of transferred funds.* All funds transferred pursuant to section 6361(c) and paragraph (a) of this section shall be transferred by the Federal Government to the State official designated by the Governor to receive such funds in the State agreement pursuant to paragraph (d)(5) of § 301.6363-1, unless the Governor notifies the Secretary or his delegate in writing of the

#### § 301.6361-4

designation of a different State official to receive the funds.

[T.D. 7577, 43 FR 59365, Dec. 20, 1978]

#### § 301.6361-4 Definitions.

For purposes of the regulations in this part under subchapter E of chapter 64 of the Internal Revenue Code of 1954, relating to collection and administration of State individual income taxes—

(a) *State agreement.* The term “State agreement” means an agreement between a State and the Federal Government which was entered into pursuant to section 6363 and the regulations thereunder, and which provides for the Federal collection and administration of the qualified tax or taxes of that State.

(b) *Qualified tax.* The term “qualified tax” means a tax which is a “qualified State individual income tax”, as defined in section 6362 (including subsection (f)(1) thereof, which requires that a State agreement be in effect) and the regulations thereunder.

(c) *Chapters and subtitles.* References in regulations in this part under subchapter E to chapters and subtitles are to chapters and subtitles of the Internal Revenue Code of 1954, unless otherwise indicated.

(d) *Subchapter E.* The term “subchapter E” means subchapter E of chapter 64 of the Internal Revenue Code of 1954, relating to collection and administration of State individual income taxes, as amended from time to time.

[T.D. 7577, 43 FR 59365, Dec. 20, 1978]

#### § 301.6361-5 Effective date of section 6361.

Section 6361 shall take effect on the first January 1 which is more than 1 year after the first date on which at least one State has filed a notice of election with the Secretary or his delegate to enter into a State agreement. For purposes of this section, a notice of election shall be deemed to have been filed by a State only if there is no defect in either the State’s notice of election or the State’s tax law of which the Secretary notified the Governor pursuant to paragraph (c) of § 301.6363-1, and

#### 26 CFR Ch. I (4-1-09 Edition)

which has not been retroactively cured under the provisions of such paragraph.

[T.D. 7577, 43 FR 59365, Dec. 20, 1978]

#### § 301.6362-1 Types of qualified tax.

(a) *In general.* A qualified tax may be either a “qualified resident tax” within the meaning of paragraph (b) of this section, or a “qualified nonresident tax” within the meaning of paragraph (c) of this section.

(b) *Qualified resident tax.* A tax imposed by a State on the income of individuals, estates, and trusts which are residents of such State within the meaning of section 6362(e) and § 301.6362-6 shall be a “qualified resident tax” if it is either:

(1) A tax based on Federal taxable income which meets the requirements of section 6362 (b), (e), and (f), and of §§ 301.6362-2, 301.6362-6, and 301.6362-7; or

(2) A tax which is a percentage of the Federal tax and which meets the requirements of section 6362 (c), (e), and (f), and of §§ 301.6362-3, 301.6362-6, and 301.6362-7.

(c) *Qualified nonresident tax.* A tax imposed by a State on the wage and other business income of individuals who are not residents of such State within the meaning of section 6362(e)(1) and paragraph (b) of § 301.6362-6 shall be a “qualified nonresident tax” if it meets the requirements of section 6362 (d), (e), and (f), and of §§ 301.6362-5, 301.6362-6, and 301.6362-7.

[T.D. 7577, 43 FR 59366, Dec. 20, 1978]

#### § 301.6362-2 Qualified resident tax based on taxable income.

(a) *In general.* A tax meets the requirements of section 6362(b) and this section only if it is imposed on the amount of the taxable income, as defined in section 63, of the individual, estate, or trust, adjusted—

(1) By subtracting an amount equal to the amount of the taxpayer’s interest on obligations of the United States which was included in his gross income for the taxable year;

(2) By adding an amount equal to the amount of the taxpayer’s net State income tax deduction, as defined in paragraph (a) of § 301.6362-4, for the taxable year;